

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GOLD COAST TRANSPORTATION SERVICE
LLC, JOSEPHINE HERRSCHAFT, ANTHONY
HERRSCHAFT,

MEMORANDUM & ORDER

21-CV-05396 (EK) (JMW)

Plaintiffs,

-against-

NTI-NY, INC., NATIONAL
TRANSPORTATION, INC., JAMES GLEICH,
JOHN KINDT, XYZ ENTITIES 1 THROUGH
10,

Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Wicks' thorough and comprehensive Report and Recommendation (R&R) dated August 1, 2023. ECF No. 80. Judge Wicks recommends that the Court grant plaintiffs Gold Coast Transportation Service LLC, Josephine Herrschaft, and Anthony Herrschaft's motion for default judgment against defendants National Transportation, Inc. ("NTI") and John Kindt, and award damages. No party has filed objections and the time to do so has expired. Accordingly, the Court reviews the R&R's recommendations for clear error. See Advisory Comm. Notes to Fed. R. Civ. P. 72(b); accord *State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013). The Court also "retains the power

to engage in *sua sponte* review of any portion of the magistrate's report and recommendation, regardless of the absence of objections." *Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 514 (S.D.N.Y. 1997), *aff'd*, 136 F.3d 313 (2d Cir. 1998).¹

The R&R's conclusion that defendants NTI and Kindt should be adjudged liable (by default) is compellingly reasoned and is hereby adopted. Although I adopt the R&R's conclusions on the liability issue now, I will defer ruling on the damages issues (which the R&R also treats comprehensively). Courts routinely decline to enter a final default judgment against a subset of defendants where non-defaulting co-defendants are "similarly situated or have closely related defenses." *SEC v. Yin*, No. 17-CV-972, 2023 WL 2753094, at *6 (S.D.N.Y. Mar. 31, 2023) (collecting cases), *aff'd sub nom. SEC v. Su*, No. 23-575, 2023 WL 5970952 (2d Cir. Sept. 14, 2023). That is the case here: claims remain pending against defendant James Gleich, who is the debtor in *In re Gleich*, No. 23-10213 (D. Nev. Bankr. 2023), see Notice of Bankr. Filing, ECF No. 72, and against whom plaintiffs did not move given the bankruptcy automatic stay.

¹ Unless otherwise noted, when quoting judicial decisions this order accepts all alterations and omits all citations, footnotes, and internal quotation marks.

Accordingly, the R&R's findings of liability are adopted. The Court reserves judgment on damages. Judgment will not enter at this time. *See, e.g., Power Up Lending Grp., Ltd. v. Cardinal Energy Grp., Inc.*, No. 16-CV-1545, 2019 WL 1473090, at *6 (E.D.N.Y. Apr. 3, 2019).

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: September 28, 2023
Brooklyn, New York